

STATE OF SOUTH CAROLINA)	BEFORE THE CHIEF PROCUREMENT OFFICER
COUNTY OF RICHLAND)	
)	DECISION
In the Matter of Protest of:)	
)	CASE No. 2007-128
)	
Champion Coach)	
)	
)	POSTING DATE:
Materials Management Office)	
IFB No. 08-S7556)	
Charter Bus Services)	
<u>South Carolina State University</u>)	December 3, 2007

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from Champion Coach (Champion). With this invitation for bids (IFB), the Materials Management Office (MMO) attempts to procure charter bus transportation services for athletic, band, and student association activities for South Carolina State University (SCSU). In the letter, Champion protested MMO's award to Savannah River Charters (SRC) alleging 1) that SRC's bid "does not meet the requested specifications of the athletic department" in that SRC "does not have DIRECTV service on their coaches" and 2) that SCR cannot meet the needs of the contract.

In order to resolve the matter, the CPO conducted a hearing November 27, 2007. Appearing before the CPO were SRC, represented by Alex Shissias, Esq.; SCSU, represented by Mary Sims, Procurement Director; and MMO, represented by John Stevens, State Procurement Officer. Champion did not appear to prosecute its case.

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference.

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On July 13, 2007, MMO published the IFB. [Ex. 1]
2. On July 24, 2007, MMO published Amendment No. 1. [Ex. 2]
3. On July 30, 2007, MMO opened bids.
4. On October 2, 2007, MMO published its intent to award.
5. On October 8, 2007, the CPO received Champion's protest.

CONCLUSIONS OF LAW

Champion alleged that SRC's bid was not compliant with the requirements of the IFB in that SRC "does not have DIRECTV service on their coaches." Regarding award of an IFB, the Consolidated Procurement Code (Code) requires that "notice of an award or an intended award of a contract to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids." [11-35-1520(10)] The Code defines a responsive bidder as "a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals." [11-35-1410(7)] MMO determined that SRC was responsive to the requirements of the IFB. According to Cooper Marlowe, SRC took no exceptions to the specifications. According to Orlando Hamlett, SRC has secured DIRECTV service for its coaches and will provide DIRECTV service for its charters, which are now set to begin December 14, 2007. His testimony is undisputed.

Champion alleged further that SRC cannot meet the needs of the contract in that SRC cannot "demonstrate the ability to carry the receivables of this award of up to or beyond 30 days" and SRC cannot "demonstrate this ability to meet the needs of the contract with only a few motor coaches in their fleet." Mr. Hamlett testified that SRC can carry the receivables from SCSU and that SRC has

secured the equipment to perform the contract. According to Mr. Hamlett's undisputed testimony, "SRC will perform."

The Code defines a responsible bidder as "a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance." [11-35-1410(6)] Mr. Marlowe made a determination that SRC is a responsible bidder, which included a follow up communication after bid opening. [Ex. 4] The Code affords the procurement officer and the State great deference in determining bidder responsibility, as it truly is at the State's risk each time it enters into a contract. The Code reads that the state's determination of bidder responsibility is final and conclusive, unless clearly erroneous, arbitrary, capricious, or contrary to law. [11-35-2410] The CPO has no evidence of, nor even an allegation of, Mr. Marlowe being clearly erroneous, arbitrary, capricious, or contrary to law in his determination.

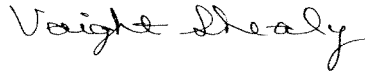
DETERMINATION

The State has determined SRC responsible and responsive. SRC has committed in writing and in testimony that it has the equipment and is fully capable in all respects to perform the contract. As Champion failed to appear and prosecute its allegation, the CPO has no evidence to the contrary.

In any protest, the protestant carries the burden of proving its allegations. The Procurement Review Panel has ruled that "the burden of proof lies with the protestant, which must sustain its allegations by the weight or preponderance of the evidence." See Case No. 1989-9, In Re: Protest of Johnson Controls, Inc.

The requirement that Champion sustain its allegations by a preponderance of the evidence could only be met, in this case, through the presentation of evidence at the hearing. Since Champion

did not attend the hearing, the CPO finds that it failed to present any evidence to support its allegations by the greater weight or preponderance of the evidence. Further, the CPO finds that by failing to appear and prosecute this matter, Champion has waived and abandoned its right to protest the issues raised in its protest letter. Therefore, the protest is dismissed.



R. Voight Shealy
Chief Procurement Officer
for Supplies and Services

December 3, 2007

Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision under subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a further administrative review by the Procurement Review Panel under Section 11-35-4410(1) within ten days of posting of the decision in accordance with Section 11-35-4210(5). The request for review shall be directed to the appropriate chief procurement officer, who shall forward the request to the panel, or to the Procurement Review Panel and shall be in writing, setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person may also request a hearing before the Procurement Review Panel.

Additional information regarding the protest process is available on the internet at the following web site:
www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 66.1 of the 2005 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2005 S.C. Act No. 115, Part IB, § 66.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003). Copies of the Panel's decisions are available at www.state.sc.us/mmo/legal/paneldec.htm

Deb Martin - Protest Solicitation 08-S7556

From: "Craig Dance" <craig@championcoach.com>
To: <protest-mmo@mmo.state.sc.us>
Date: 10/8/2007 1:47:15 PM
Subject: Protest Solicitation 08-S7556

Chief Procurement Officer:

I would like to protest the award of **Solicitation 08-S7556** to Savannah River Charters based on the fact the company does not meet the requested specifications of the athletic department. The bid states that all motorcoaches must have DIRECTV service for all athletic trips. I understand Savannah River Charters does not have DIRECTV service on their coaches. Champion Coach has a fleet of 26 motorcoaches all equipped with DIRECTV service as requested.

The bid also states a company must be able to demonstrate the ability to carry the receivables of this award of up to or beyond 30 days. Based on the small fleet Savannah River Charters has I do not believe the company would be able to demonstrate this ability or meet the needs of the contract with only a few motorcoaches in their fleet.

Sincerely,

Craig Dance
President

Champion Coach
145 Ben Hamby Lane
Greenville, SC 29615
(864) 284-9000 (800) 583-7668
Fax (864) 284-9400